IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl.R.No.633 of 2007

Date of Decision: 17.4.2007

Jitender .....Petitioner

Versus

State of Haryana .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Ashit Malik, Advocate for the petitioner.

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S. D. ANAND, J.

Notice of motion.

On the asking of the Court, Mr. S, S. Mor, Senior DAG Haryana accepts notice on behalf of State of Haryana.

The relevant matter (a case under Sections 498-A/406/34 of the Indian Penal Code) was fixed for the recording of evidence on 18.11.2004. The petitioner filed an application (Annexure P1) on that date for adjournment of the case on a plea that the counsel representing him was seriously ill and not in a position to attend the Court. That application was dismissed by the Trial Court on that very date. The Court proceeded to record the examination-in-Chief of three prosecution witnesses who could not, however, be cross-

examined on behalf of the defence on account of non-availability of the counsel. The counsel aforementioned ultimately died some time thereafter. A counsel, who came to be engaged at that point of time, inspected the file and filed an application under Section 311 of Code of Criminal Procedure on 15.12.2004 for the recall of the three witnesses (examined on 18.11.2004) for purposes of cross-examination. That application was dismissed vide impugned order dated 15.2.2007. The Court observed that allowance of application would amount to review of order dated 18.11.2004.

As would be apparent from a perusal of the record, the three witnesses examined on 18.11.2004 are very relevant to unfold the prosecution plea. The concerned Presiding Officer ought not to have proceeded to complete their statements on 18.11.2004 itself, particularly when the petitioner had expressed inability to cross-examine the witnesses in the absence of the learned counsel representing him. The basic purpose of law is to do substantial justice between the parties. There is a ring of truth in the averment that the learned counsel representing petitioner was ailing on 18.11.2004 and he is reported to have died some time thereafter. In any case, there was no material before the concerned Court to disbelieve the averment to the effect that the defence counsel was ailing and was unable to attend the Court.

As already indicated, the basic and exclusive purpose of procedural law is to advance the interest of justice. No part of the procedural law can be interpreted in a manner which disables an accused from raising an appropriate defence. If an accused were to be disabled in the indicated manner, it would amount to travesty of justice and defeat the very purpose of law. The learned Court appears to have been labouring under a mis-conception that the

allowance of the request for recall of the three witnesses would amount to review of order dated 18.11.2004.

In view of the foregoing discussion, the present revision petition shall stand allowed. The order dated 15.2.2007 shall stand set aside. The three witnesses, who were examined on 18.11.2004, shall be recalled by the Court for cross-examination on behalf of the defence.

Disposed of accordingly.

(S. D. ANAND)
JUDGE

April 17, 2007
SRM